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DE RUCNDT #0108/01 0391928
ZNY CCCCC ZZH
P 081928Z FEB 07
FM USMISSION USUN NEW YORK
TO RUEHC/SECSTATE WASHDC PRIORITY 1297
INFO RHMCSSU/FBI WASHINGTON DC PRIORITY

C O N F I D E N T I A L USUN NEW YORK 000108

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DEPARTMENT FOR IO/UNP AND L/DL, L/UNA AND L/CA

E.O. 12958: DECL: 02/01/2017

TAGS: [CVIS](#) [OFDP](#) [UN](#) [AF](#)

SUBJECT: UN ASKS USG TO RECONSIDER ITS REQUIREMENT THAT
NY-BASED STAFFER BE INTERVIEWED FOR G-4 VISA ABROAD

Classified By: U.S. Representative (Acting), Amb. Alejandro D. Wolff, 1
.5(b)

¶1. (SBU) Summary and Action Request: Representatives from the UN's Office of Legal Affairs (OLA), the UN Travel and Transportation Service, and UNDP met with representatives of USUN's Host Country and Legal sections on January 30 to express the UN's serious concerns regarding the USG determination that a UNDP staffer must apply and be interviewed abroad to renew his G-4 visa rather than applying for and being issued the visa by USUN in New York. USUN conveys the points the UN raised, and in paragraph 7 below requests guidance for replying to the UN. End Summary and Action Request.

The precipitating visa case

¶2. (SBU/NOFORN) Mohammad Younus, a UNDP staff member and an Afghani national, applied to USUN in January 2007 to renew his G-4 visa, as he had done each year since 2002, (Note: Security Advisory Opinions (SAOs) were not required for Afghani nationals at the UN until 2006.) The SAO clearance regarding his 2007 application (referred to as "administrative processing" when dealing with interlocutors outside the USG) indicated that there was no objection to issuing a visa if it could be established that the applicant was not a member of the Taliban or Afghani-state-run entity from 1996-November 2001. Making this determination would seem to require interviewing the applicant, and because the USG does not interview visa applicants inside the U.S., USUN informed the UN that Mr. Younus would have to apply for his visa abroad as the visa was "not clearly approvable" in the U.S.

USUN position

¶3. (U) At a January 30 meeting with representatives of OLA, the UN Travel and Transportation Service, and UNDP, USUN MinCouns for Host Country Affairs explained the U.S. response concerning the processing of Mr. Younus' visa. He noted that, as a courtesy, USUN in New York handles a caseload of approximately 7000 visas per year for members of the UN community, a vast majority of which are issued in New York. Only a small number of individuals are asked to apply at a U.S. Embassy or Consulate overseas. In these latter cases (most of which are due to a UN staffer needing to travel and realizing too late that his/her visa has expired or was about to expire, or because administrative processing of the application has not concluded by the time he/she must travel), USUN helps facilitate obtaining the individual's visa, e.g., by requesting from the visa issuing post an

appointment on the applicant's behalf. USUN MinCouns also noted that G-4 visas are rarely denied, reminding the UN interlocutors that there are very limited grounds for denying a G-4 visa, and that a process is in place to deal with those exceedingly rare cases. USUN MinCouns also noted that in the current case, the applicant's administrative processing had been concluded and thus, if he applied promptly at a visa issuing post abroad, it is unlikely that he would be stranded or delayed in obtaining visa adjudication.

UN Office of Legal Affairs raises points

¶4. (U) OLA's Serguei Tarassenko noted that Younus has been in NY working for the UN for at least three years and had no problem renewing his visa at USUN previously. Tarassenko then cited the Convention on Privileges and Immunities of the United Nations (1946, Articles V and VII), the U.S.-UN Headquarters Agreement (1947, Sections 11 and 13) and the International Organization Immunities Act (1945). Tarassenko emphasized that the UN does not want to upset its harmonious relationship with the Host Country, that the UN seeks an informal resolution of the issue, and that it hopes that Washington will authorize an exception in Mr. Younus's case. Specifically, Tarassenko set forth the following points:

--The Convention on Privileges and Immunities of the United Nations, Article V, Section 18 exempts UN officials and their dependents from immigration restrictions. Article VII, Section 25 states that officials who hold UN laissez-passer, and who bear a certificate that they are travelling on UN business, shall be dealt with as speedily as possible, and that such persons shall be granted facilities for speedy travel.

--The U.S.-UN Headquarters Agreement, Article IV, Section 11 states that "The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of ... officials of the UN, or of specialized agencies..." The U.S.-UN headquarters Agreement, Article IV, Section 13 states that "Laws and regulations in force in the United States regarding entry of aliens shall not be applied in such a way as to interfere with the privileges referred to in Section 11...."

--The International Organizations Immunities Act also underscores the privileges and immunities granted to officials of international organizations.

¶5. (CONF/NOFORN) Additional OLA arguments included the following:

--There are budgetary consequences for the UN (and ultimately the U.S. which funds 22% of the UN's budget) in requiring a UN staffer to apply for a visa abroad as the UN must pay the individual's travel, per diem, and salary while (s)he waits for the visa.

--Requiring a UN staffer to apply abroad to obtain a visa sets a problematic precedent. The UN is concerned that the requirement will be applied to individuals of other nationalities, and could lead the UN Staff Union to charge that the Host Country discriminates among staffers of different nationalities and that UN management has acquiesced in such discrimination.

--Requiring Younus to apply abroad creates uncertainty among Secretariat members, as they wonder whether they too will be

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asked to apply or be interviewed abroad and whether they might be denied re-entry to the United States.

--If the visa were denied, it can be argued that the Host Country has unilaterally changed the status of a UN employee.

--The UN asked whether the U.S. insistence on requiring

Younus to apply abroad relates to the FBI's efforts in April 2005 to interview him regarding an individual who had tried to contact him. Younus expressed concern with the FBI's approach at the time, and the UN called USUN to relay its strong concerns. Tarassenko did note, however, that in the end Younus and the UN did cooperate in that investigation, and Younus received at least one visa renewal from USUN since that time.

-- Given the Secretary General's responsibility for assigning staff to perform UN functions, the United States' requiring a staff member to stop work and travel abroad to obtain a visa could be deemed as interference in the SG's performance of his duties under the UN Charter to assign functions to the staff of the Secretariat.

--If the individual were to be denied a visa abroad, the UN would be "in a legal crunch" and would be looking at the Charter and the other internationally relevant documents, including the arbitration provisions in Section 21 of the U.S.-UN headquarters Agreement. Tarassenko further stated that the General Assembly might ultimately be compelled to ask that the matter be referred to the International Court of Justice for a legal opinion.

USUN MinCouns indicated that USUN would report the UN's serious concerns to the Department, and would convey to the UN its response.

Resolving the instant case

¶6. (SBU) As Younus is expected to travel for the UN on mission soon, and his SAO clearance appears to be valid until April 11, the solution may be for him to be interviewed at a U.S. visa-issuing post near New York (e.g., Montreal), and if eligible, be issued his G-4 visa there. Alternatively, if he is soon going on UN mission near a U.S. visa-issuing post, he could be interviewed and issued a visa there. USUN could alert the post at which he applies so that his visa interview appointment could be expedited.

¶7. (U) Action request - USUN seeks Department's guidance in responding promptly to concerns raised by the UN.

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